

UNITED STATES DISTRICT COURT  
FOR THE DISTRICT OF SOUTH CAROLINA  
ORANGEBURG DIVISION

Dontavious Mack,	)	Civil Action No.: 5:15-cv-00309-RBH
	)	
Petitioner,	)	
	)	
v.	)	<b>ORDER</b>
	)	
Warden, Perry Correctional Institution,	)	
	)	
Respondent.	)	
_____	)	

Petitioner Dontavious Mack, a state prisoner proceeding pro se, initiated this action by filing a petition for a writ of habeas corpus pursuant to 28 U.S.C. § 2254. *See* Petition, ECF No. 1. Respondent filed a return and a motion for summary judgment. *See* ECF Nos. 16 & 17. The Magistrate Judge issued a *Roseboro*<sup>1</sup> order directing Petitioner to respond to the motion for summary judgment, *see* ECF No. 18, but Petitioner failed to file a response. The Magistrate Judge then issued an order requiring Petitioner to inform the Court whether he wished to continue with his case, and if so, to file a response to the motion for summary judgment, *see* ECF No. 20; Petitioner filed no response. The matter is now before the Court for review of the Report and Recommendation (R & R) of United States Magistrate Judge Kaymani D. West.<sup>2</sup> *See* R & R, ECF No. 23. The Magistrate Judge recommends the Court dismiss Petitioner's habeas petition with prejudice for failure to prosecute.

The Magistrate Judge makes only a recommendation to the Court. The recommendation has no presumptive weight, and the responsibility to make a final determination remains with the Court. *Mathews v. Weber*, 423 U.S. 261, 270-71 (1976). The Court must conduct a de novo review of those

---

<sup>1</sup> *Roseboro v. Garrison*, 528 F.2d 309 (4th Cir. 1975).

<sup>2</sup> This matter was referred to the Magistrate Judge pursuant to 28 U.S.C. § 636(b)(1)(B) and Local Rule 73.02(B)(2)(c) for the District of South Carolina.

portions of the R & R to which specific objections are made, and it may accept, reject, or modify, in whole or in part, the recommendation of the Magistrate Judge or recommit the matter with instructions. 28 U.S.C. § 636(b)(1).

Neither party has filed objections to the R & R. In the absence of objections to the R & R, the Court is not required to give any explanation for adopting the Magistrate Judge's recommendations. *See Camby v. Davis*, 718 F.2d 198, 199 (4th Cir. 1983). The Court reviews only for clear error in the absence of an objection. *See Diamond v. Colonial Life & Acc. Ins. Co.*, 416 F.3d 310, 315 (4th Cir. 2005) (stating that "in the absence of a timely filed objection, a district court need not conduct de novo review, but instead must 'only satisfy itself that there is no clear error on the face of the record in order to accept the recommendation'" (quoting Fed. R. Civ. P. 72 advisory committee's note)). After a thorough review of the record in this case, the Court finds no clear error. Accordingly, the Court adopts and incorporates by reference the R & R [ECF No. 23] of the Magistrate Judge.

Furthermore, a certificate of appealability will not issue absent "a substantial showing of the denial of a constitutional right." 28 U.S.C. § 2253(c)(2). When the district court denies relief on the merits, a prisoner satisfies this standard by demonstrating that reasonable jurists would find that the court's assessment of the constitutional claims is debatable or wrong. *Slack v. McDaniel*, 529 U.S. 473, 484 (2000); *see also Miller-El v. Cockrell*, 537 U.S. 322, 336-38 (2003). When the district court denies relief on procedural grounds, the prisoner must demonstrate (1) the dispositive procedural ruling is debatable and (2) the petition states a debatable claim of the denial of a constitutional right. *Slack*, 529 U.S. at 484-85. In the instant matter, the Court concludes that Petitioner has failed to make the requisite showing of "the denial of a constitutional right."

**IT IS THEREFORE ORDERED** that Petitioner's § 2254 habeas petition [ECF No. 1] is

**DISMISSED WITH PREJUDICE** for failure to prosecute and that Respondent's motion for summary judgment [ECF No. 17] is **DENIED AS MOOT. IT IS FURTHER ORDERED** that a certificate of appealability is **DENIED** because Petitioner has failed to make "a substantial showing of the denial of a constitutional right" under 28 U.S.C. § 2253(c)(2).

**IT IS SO ORDERED.**

Florence, SC  
August 24, 2015

s/ R. Bryan Harwell  
R. Bryan Harwell  
United States District Judge